

NO. 47906-1-II

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,**

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

JERRY BODINE,

Appellant.

RESPONDENT'S BRIEF

RYAN JURVAKAINEN
Prosecuting Attorney
SEAN BRITTAIN/WSBA 36804
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Representing Respondent

HALL OF JUSTICE
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I. ISSUE

1. DID THE STATE PRESENT SUFFICIENT EVIDENCE TO PROVE THE SCHOOL BUS STOP ENHANCEMENT BEYOND A REASONABLE DOUBT?
2. DID THE TRIAL COURT EXCEED ITS AUTHORITY IN IMPOSING CONSECUTIVE SCHOOL BUS STOP ENHANCEMENTS?
3. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT REFUSED TO WAIVE THE SCHOOL BUS STOP ENHANCEMENTS?

II. SHORT ANSWER

1. NO. THE STATE FAILED TO PROVE THE SCHOOL BUS STOP ENHANCEMENT BEYOND A REASONABLE DOUBT.
2. DUE TO THE STATE'S FAILURE TO PROVE THE SCHOOL BUS STOP ENHANCEMENT BEYOND A REASONABLE DOUBT, THIS ISSUE IS MOOT.
3. DUE TO THE STATE'S FAILURE TO PROVE THE SCHOOL BUS STOP ENHANCEMENT BEYOND A REASONABLE DOUBT, THIS ISSUE IS MOOT.

III. FACTS

The State agrees with the Appellant's rendition of the procedural history and facts of the present matter.

IV. ARGUMENT

The State concedes that it failed to prove the school bus stop enhancement when it failed to produce evidence that the bus stop existed in April and June of 2014. At most, the State proved that the bus stops existed at the time of trial. As such, the State agrees that the school bus stop

enhancements should be dismissed and the matter should be remanded back to Cowlitz County Superior Court for resentencing.

Due to the State's contention, the remaining issues brought forth by the Appellant are moot. Whether the enhancements should be run consecutive or concurrent (which was ultimately clarified by the Washington Supreme Court in *State v. Conover*, 183 Wn.2d 706, 355 P.3d 1093 (2015)) will not be at issue during the resentencing hearing. Likewise, whether the trial court has the authority to waive the school bus stop enhancements pursuant to an exceptional sentence below the standard range will also not be addressed at resentencing.

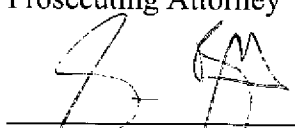
V. CONCLUSION

The Appellant's case should be remanded back to the trial court.

Respectfully submitted this 1st day of April, 2016

RYAN P. JURVAKAINEN
Prosecuting Attorney

By:



SEAN M. BRITTAİN
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Deputy Prosecuting Attorney
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CERTIFICATE OF SERVICE

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on April 4th, 2016.

Michelle Sasser
Michelle Sasser

COWLITZ COUNTY PROSECUTOR

April 04, 2016 - 11:52 AM

Transmittal Letter

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